



**STATE OF NEW JERSEY**

In the Matter of Gabriel Nazario	:	<b>FINAL ADMINISTRATIVE ACTION</b>
Ramirez, Police Officer (S9999A),	:	<b>OF THE</b>
North Brunswick	:	<b>CIVIL SERVICE COMMISSION</b>
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CSC Docket No. 2021-876	:	
	:	
	:	List Removal Appeal
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**ISSUED: MAY 3, 2021 (SLK)**

Gabriel Nazario Ramirez appeals the decision to remove his name from the Police Officer (S9999A), North Brunswick eligible list on the basis that he falsified his application.

The appellant took the open competitive examination for Police Officer (S9999A), North Brunswick, which had an August 31, 2019 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant falsified his application.

On appeal, the appellant presents that, prior to his appeal, per Civil Service rules, he requested that the appointing authority provide him all documents regarding the falsification of information, including all documents that were sent to this agency and a copy of his 2020 application. He also requested the same for his 2018 application. He believes that this is now a personal matter and he may be experiencing discrimination for not currently being a Police Officer. The appellant claims that the appointing authority has not complied with Civil Service rules for failing to provide the requested documentation prior to his appeal.

Concerning his 2020 employment application, the appellant asserts that he made sure that all answers were accurate as he had discrepancies with his 2018 application and he did not want any issues. Further, he explains that he is a combat and disabled veteran and he lives by the motto of honor, courage and commitment.

The appellant presents that North Brunswick Police Officers advised him that the second and third positioned candidates on the subject certification are Police Officers for nearby police departments and it is easier to hire a current officer then send a new one to the academy. Further, he asserts that he was advised that there is currently a family member of a Police Officer on the subject list and that the North Brunswick Police Department would like to appoint this individual. Additionally, he states that the appointing authority is planning on appointing three Police Officers, with one spot going to a female who was injured in the academy from a previous test cycle who would be returning to complete the academy in January 2021. Therefore, the appellant believes that he is being discriminated against for not being a current Police Officer and that the appointing authority is doing everything in its power to remove him from the list so that it can appoint other candidates.

In response, the appointing authority, represented by Katie Mocco, Esq., presents that the appellant was instructed to list all his residences within the past 20 years on his application; however, he only provided his prior residences since April 2009. It asserts that the omission of almost a decade of residences amounts to a material misrepresentation. Further, the appellant was instructed to provide his complete motor vehicle history and he responded by including five motor vehicle violations. However, it presents that the appellant's certified driver's abstract reveals that he omitted a 2006 obstructing the passage of vehicle charge. Additionally, the appellant was instructed to indicate if he had ever been involved in a motor vehicle accident. However, the appellant's certified driver's abstract reveals that he omitted that he was involved in a 2012 accident.

Additionally, the appointing authority presents racially and sexually discriminatory comments that the appellant made in social media posts. It notes that the Civil Service Commission (Commission) has determined that discriminatory comments made on social media outside of work may violate the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).<sup>1</sup> Further, the appointing authority asserts that to achieve the goal of maintaining a work environment free from discrimination and harassment, the State strictly prohibits conduct that includes forms of employment discrimination or harassment based on certain protected categories and the appellant's social media comments pertain to several protected categories. Further, it indicates that governing statutes preclude appointment unless the candidate "is of good moral character." *See N.J.S.A. 40A:14-9(4)*; *See also Karins v. City of Atlantic City*, 152 N.J. 532, 562 (1998). The appointing authority argues that the appellant's conduct deteriorates the public trust tending to destroy the public's confidence in the entire police department.

In reply, the appellant states that he contacted the appointing authority on multiple occasions regarding obtaining copies of his application and was denied. He

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<sup>1</sup> It is noted that as the appointing authority is not a State agency, the State Policy does not apply to it.

presents that he is only asking for what he is entitled to receive under Civil Service rules and is needed for him to make a proper appeal. The appellant requests copies of his 2018 and 2020 applications and all supporting documentation that was sent to this agency. Additionally, he requests all documentation that he provided during the application processes, all documentation he previously sent via email or regular mail regarding his application, and all email sent by him regarding his application. Further, the appellant requests all emails that he sent regarding his application. He reiterates his claim that he needs this information to properly appeal.

In further response, the appointing authority submits the documentation that it sent to this agency in support of its request to remove the appellant's name from the list. The appointing authority states that if the appellant has specific emails, or at least specific individuals that he communicated with via email, a search can be done for those emails to produce his requested documentation.

In further reply, the appellant states that he now believes the appointing authority does not want a disabled veteran to become one of its officers. He contends that the appointing authority has switched up the story regarding the pictures<sup>2</sup> as this information was previously sent from the old list.<sup>3</sup>

## CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

*N.J.A.C.* 4A:4-4.7(b)1 provides that an appointing authority that requests removal of an eligible's name from a list shall submit to an appropriate representative of the Commission, no later than the date for disposition of the certification, all documents and argument upon which it bases its request. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the appropriate Commission representative.

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons.

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<sup>2</sup> While the Commission is not certain what the appellant is referencing, it believes he is referring to the racially and sexually discriminatory comments that the appellant made in social media posts.

<sup>3</sup> It is noted that the appellant did not copy the appointing authority on these comments. It is unclear if the appellant was just making comments to this agency, or if these were comments he was requesting to be considered by the Commission. It is noted that under *N.J.A.C.* 4A:2-1.1(d)1, each party must serve copies of all materials submitted on all other parties.

*N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

Initially, the appellant complains that the appointing authority did not provide him the documentation to support his removal as he requested in violation of *N.J.A.C.* 4A:4-4.7(b)1. However, on appeal, the appointing authority did provide the documentation that was sent to this agency when it requested that the appellant's name be removed from the subject list, which complied with this rule as it had to provide this information upon request **or** upon appeal. As such, the appellant received the required documentation and had a full opportunity to respond to all the reasons presented to this agency on appeal. Regarding the appellant's request for his 2018 application and other documentation, there is no requirement under Civil Service rules requiring the appointing authority to provide an application from a prior examination or other documentation that was not sent to this agency in support of its removal request. However, although not obligated to do so, the appointing authority did offer to search for specific emails, or at least specific individuals that the appellant communicated with via email. However, the appellant did not respond to this offer.

Regarding falsification, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. The appointing authority indicted that the appellant failed to disclose almost a decade of residences prior to 2009, a 2006 motor vehicle violation, and a 2012 motor vehicle accident. Initially, the appellant offered no substantive response to the falsification allegation. Further, on appeal, after receiving the relevant parts to his 2020 application and other supporting documentation that was sent to this agency to support its request to remove his name, he still did not provide any substantive response. It is noted that the appellant's 2018 application for a prior examination is irrelevant to the subject examination. Presumably, the appellant is seeking his 2018 application to prove that the appointing authority already had the requested information. However, each examination is separate and there is no obligation for an appointing authority to incorporate an application from a prior examination so that the appellant's application can be considered complete. Further, the appellant is held accountable for the accuracy of the information submitted and any failure to include information was at his peril. See *In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Additionally, even if there was no intent to deceive, at minimum, the appointing authority needed this information to have a complete understanding

of his background to properly evaluate his candidacy. *See In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017).

Concerning the appellant's racially and sexually discriminatory comments made in social media posts, the appellant provides no substantive response. Instead, the appellant states that the appointing authority is bringing up new issues on appeal that were from the "old" list, which he believes demonstrates that the appointing authority does not want a disabled veteran to become one of its officers. Initially, it is noted that the appointing authority did present the discriminatory social media posts to this agency as one of the reasons for its request to remove the appellant's name from the subject list. However, it was this agency that only initially informed the appellant of the falsification issue due to limitations of its systems. Regardless, the appellant was informed of this issue on appeal and he chose not to offer any substantive response. Moreover, the appellant has not presented one scintilla of evidence that the appointing authority's removal of his name was based on him being a disabled veteran, a desire to only hire Police Officers who have been through the academy, nepotism, "personal," or any other unlawful or invidious reason. Moreover, these social media posts indicate that the appellant lacks the good judgment to be a Police Officer. In this regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. A municipal Police Office is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990).

Therefore, in reviewing the totality of the appellant's background, the Commission finds that it was appropriate for the appointing authority to remove his name from the Police Officer (S9999A), North Brunswick eligible list.

### **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 28th DAY OF APRIL, 2021

*Deirdre' L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

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